

**\* \* REASONS FOR AMENDMENTS AND REMARKS \* \***

Applicant wishes to acknowledge with appreciation the Examiner's analysis and efforts in examining this application. The Office Action has been thoroughly studied. A sincere and earnest effort to respond to the Examiner's Office Action has been made by Applicant. Accordingly, reconsideration and allowance of the subject claims are respectfully requested.

**I. Claims Target**

The subject matter of dependent Claim 9 has been integrated into independent Claim 1. Accordingly, Claim 9 has been cancelled. Claims 11-13, 15, 18-20, and 22-28 have also been cancelled without prejudice in an effort to move prosecution forward. Accordingly, Claims 1-4 and 8 are currently pending.

**II. Claim Rejections under 35 U.S.C. § 112**

The Examiner rejected Claims 1-4, 6, 8-9, 11-13, 15, 18-20, 22-28 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement for two reasons.

First, the Examiner contended that the limitation in Claims 1 and 20 in which the drug assistance request template is automatically populated “based on the detection by the web-based interface that the patient qualifies for a drug assistance program” does not have support in the specification. Applicant respectfully disagrees. For example, the specification states

that the banner section “performs health assistance-related functions based on the content of the health record section.” Although the term “detect” is not explicitly used in the specification, Applicant respectfully submits that this disclosure of “assistance-related functions based on the content of the health record section” at least implicitly supports the “detection” limitation in Claims 1 and 20. In any event, Applicant has amended Claims 1 to remove the phrase “based on the detection by the web-based interface that the patient qualifies for a drug assistance program” and cancelled Claim 20 to move prosecution forward. Based on this amendment to Claim 1 and cancellation of Claim 20, Applicant respectfully submits that this rejection with respect to Claims 1 and 20 (and Claims 2-4, 6, 8-9, and 22-28 due to dependencies) is now moot.

Second, the Examiner asserted that the limitation in Claim 11 in which a communications session with a selected drug provider is made “at a network address associated with the selected drug provider” is not specifically disclosed. Although the Examiner admitted that it is at least questionable whether a network address is implicitly or inherently disclosed, the Examiner contended that Applicant has specifically relied on this limitation as overcoming the prior art. Applicant respectfully disagrees that there was a specific reliance on a “network address”; instead, the thrust of Applicant’s argument was that the Kozic reference only supported a central pharmacist in which all remote locations connected to the same location, which stands in contrast to Claim 11 in which an interactive communication session

is made with a selected one of multiple drug providers. In any event, Applicant has cancelled Claim 11 without prejudice to move prosecution forward.

**III. Claim Rejections under 35 U.S.C. § 103(a)**

Claim 1-4, 6, 8, 20, 22-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Edelson et al. (U.S. Pat. No. 5,737,539) (“Edelson”) in view of Kozic (U.S. Pre-grant Pub. No. 2003/0179287) (“Kozic”), further in view of Kaker et al. (U.S. Pre-grant Pub. No. 2001/0037218) (“Kaker”). The Examiner rejected Claims 9 and 28 under 35 U.S.C. 103(a) as being unpatentable over Edelson in view of Kozic, further in view of Kaker and Rao (U.S. Pre-grant Pub. No. 2003/0177038) (“Rao”). Claim 27 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Edelson in view of Kozic, further in view of Kaker and Applicant admitted prior art (AAPA). Since Claims 11-13, 15, 18-20, and 22-28 have been cancelled without prejudice, this rejection is moot with respect to those claims. With respect to the other claims, any further rejection would be respectfully traversed.

**Claim 1**

Applicant has integrated the limitation of dependent Claim 9 into independent Claim 1 in which an alert banner is configured to display a commonly misdiagnosed illness responsive to one or more medical conditions in the patient health record section. Additionally, Applicant has clarified that the alert banner is displayed at the point of care.

The Examiner acknowledged that the combination of Edelson, Kozic, and Kaker does not disclose the alert banner configured to display a commonly misdiagnosed illness responsive to one or more medical conditions in the patient health record section. However, the Examiner relies on Rao for this limitation. Assuming *arguendo* that one wanted to combine Edelson, Kozic, Kaker and Rao, the resulting combination would not disclose all limitations of amended Claim 1. To establish a *prima facie* case of obviousness, all the claim limitations must be taught or suggested by the prior art. See MPEP § 2143.03. As discussed below, the alert banner recited in amended Claim 1 includes limitations not disclosed or suggested by Rao.

The alert banner recited in Claim 1 is presented to the patient's physician at the point of care based on the patient's medical record to potentially alter the physician's diagnosis. As explained in the specification, "the alert may be activated when one or more of the medical conditions shown for the current patient have been flagged ... A doctor reviewing the alert may realize that a misdiagnosis has been made and change their prescribed treatment." In order words, this is a tool that the physician uses at the point of care to reduce the possibility of a misdiagnosis.

The bio-terror alert of Rao is entirely different than the alert banner recited in amended Claim 1. Rao discusses techniques for automatically identifying a disease outbreak indicative of a potential bio-terror attack. Rao at ¶ 10. Rao's system uses data mining of patient records to correlate patient data with disease indicia to estimate the probability of a disease outbreak. Id. at ¶ 11. If the estimated probability exceeds a threshold value, a bio-terror alert is issued. See

Rao's Abstract and Fig. 4. The automated bio-terror detection system of Rao analyzes structured data that has been mined from multiple patients' computerized records. Rao at ¶¶ 31, 34-36. Although hospitals and government agencies may communicate with the bio-terror detection system, patient identification is stripped off medical data transmitted outside the system to comply with privacy requirements. Rao at ¶ 34. The analysis of multiple patient's structured records that has previously been mined is clearly not something that is happening at the point of care. There are other indications in Rao that the alert does not occur at the point of care. For example, Rao explains that after an alert has been issued, "it would be up to the expert viewing the data to decide how to best proceed: request the entire patient record, contact the attending physician, request extra tests, quarantine, etc." Rao at ¶ 13. This is clearly not occurring at the point of care or the attending physician would not need to be contacted after the alert.

Moreover, the Examiner's statement regarding the reason for combining Rao with Edelson falls way short of "articulated reasoning" required by the Supreme Court in KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007). According to the Supreme Court in KSR, an Examiner must "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." Moreover, the Examiner must make "explicit" this rationale of "the apparent reason to combine known elements in the fashion claimed." KSR, 550 U.S. at 401. Instead of this "articulated reasoning," the Examiner makes the cursory statement that "it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the feature of alerting to

misdiagnosed illnesses within the teaching of Edelson for the motivation for giving the correct diagnosis to the patient.” This rationale is belied by the teaching of Edelson, which is completely devoid of anything related to the diagnosis of the patient. Instead, Edelson is a prescription system in which a physician prescribes a drug to the patient after the diagnosis has been made. The Examiner’s rationale is an improper hindsight analysis and should be withdrawn.

Claim 1 has also been amended to clarify that the banner section includes an interactive communications portal configured to host a communications session with a selected drug provider from a plurality of drug providers over the communication network with the selected drug provider based on prescription information in the patient health record. The Examiner acknowledges that “Edelson does not specifically disclose the communication session being an interactive communication portal session.” Office Action of 3/17/2010 at 7. The Examiner asserted that Kozic discloses an interactive communication session with a drug provider. However, even assuming *arguendo* that one desired to combine Edelson and Kozic, the combination would still not teach all the limitations of Claim 1. Kozic discloses a central pharmacist from which the remote locations connect. A central pharmacist inherently requires all remote locations connect to the same location. This stands in contrast to the limitations of Claim 1 in which there are a plurality of drug providers and there is a connection of a selected drug provider. Accordingly, for at least these reasons, Applicant requests an indication that Claim 1 (and claims dependent thereon) are allowable.

**IV. Conclusion**

If upon consideration of the above the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact Applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. To the extent additional fees are required, please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 02-1010 (26880/100961) and please credit any excess fees to such deposit account.

Respectfully submitted,

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